

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned On Brief February 17, 2006

IN RE: ESTATE OF MARY REEVES DAVIS

Direct Appeal from the Probate Court for Davidson County
No. 99P-1955 Randy Kennedy, Judge

No. M2005-01281-COA-R3-CV - Filed May 11, 2006

The probate court awarded attorney's fees to attorney retained by decedent's conservator. On appeal, administrator of decedent's estate contends the award was in error where estate disputes conservator's accounting. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed; and
Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Ames Davis, Bryan Howard, Paul C. Hayes, Nashville, Tennessee, for the Appellant, Ames Davis, Administrator C.T.A of the Estate of Mary Reeves Davis.

George H. Cate, Jr., Nashville, Tennessee.

MEMORANDUM OPINION¹

In the 1960's, country musician Jim Reeves (Mr. Reeves) died in an airplane accident and was survived by his wife, Mary White Reeves. Mary White Reeves subsequently married Terry Davis. She had no children. In April 1996, Mary White Reeves Davis (Ms. Davis) executed a trust agreement which she revoked in May 1996. In June 1996, she entered into an agreement

¹**RULE 10. MEMORANDUM OPINION**

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

with United Shows of America, Inc., to sell assets including reality and memorabilia of Jim Reeves. In July 1996, she executed a second trust.

A relative of Mr. Reeves initiated conservatorship proceedings questioning the validity of the 1996 sale and trust. In January 1997, the Probate Court for Davidson County appointed Ms. Davis's brother, W. D. White, temporary conservator. W. D. White died in June 1997, and the Probate Court appointed Ms. Davis's nephew, Dr. William White (Dr. White) to serve as permanent conservator. Petitioner/Appellee George H. Cate, Jr. (Mr. Cate) represented Dr. White during the conservatorship. Ms. Davis died in November 1999.

In December 1999, Dr. White petitioned the Probate Court for Davidson County to admit into probate a Will that appeared to have been properly executed by Ms. Davis in 1976. In March 2000, the probate court appointed Appellant Ames Davis ("Administrator") administrator of Ms. Davis's estate by consent order. The probate court further ordered Dr. White to take necessary steps to prepare a final accounting and close the conservatorship. In August 2000, Mr. Cate filed a claim against Ms. Davis's estate for legal fees in the amount of \$10,410. In September, Administrator filed an exception to the claim. In February 2003, Mr. Cate moved the court to amend his claim and fix legal fees and expenses at \$10,322.50 for December 17, 1998 through August 9, 2000, and \$9,745.50 for August 21, 2000 through July 6, 2001. In the meantime, the estate litigated matters relating to the 1996 trust executed by Ms. Davis and Dr. White's actions as conservator. In April 2005, the probate court granted Mr. Cate's motion, finding his charges for professional services and request for reimbursement reasonable and necessary. The court ordered a judgment of \$20,068 against Ms. Davis's estate. Administrator appeals. We affirm.

Issue Presented

The issue raised on appeal, as presented by Administrator, is whether a decedent's estate is liable to pay attorney's fees expenses incurred by the conservator for the decedent where (A) the Administrator filed exceptions to the conservator's accounting and such accounting has never been approved; (B) the decedent's estate is pursuing an action against the conservator for breach of fiduciary duty, which action remains pending; and (C) the Administrator's action against the conservator relates to advice given by the attorney to the conservator that the conservator could, without court approval, release liens securing indebtedness due the decedent, and the Administrator asserts that such release required court approval.

Analysis

We begin our analysis by noting that Administrator does not assert that the trial court erred in finding Mr. Cate's fees were reasonable and necessary. Rather, Administrator argues that the award of attorney's fees for services rendered as counsel for the conservator is

premature where litigation is pending between Administrator and the conservator.² Administrator cites only *Pitts v. Blackwell*, No. M2000-01733-COA-R3-CV, 2001 WL 1660829 (Tenn. Ct. App. Dec. 28, 2001) (*no perm. app. filed*), in support of his assertion that the trial court erred. Mr. Cate, on the other hand, asserts *Pitts* is distinguishable from the case at bar where the attorney's fees in this case arise not from defense of the conservator's accounting, but from services rendered during the course of the conservatorship and opening of the estate.

In *Pitts*, this Court addressed whether the probate court had erred in ordering decedent's estate to pay a conservator's attorney's fees that were associated with the conservator's defense of the amended first and final accounting. *Pitts*, 2001 WL 1660829, at *6. We held that because the conservator in that case was not successful in his defense of the accounting, the probate court had erred in ordering the estate to pay the conservator's legal fees. *Id.*

In the case at bar, however, Administrator does not assert Mr. Cate's legal fees were associated with the defense of Dr. White's accounting. Additionally, Administrator filed his complaint against United Shows of America and Dr. White on January 29, 2001, and Mr. Cate withdrew from representation of Dr. White in March 2001. Mr. Cate moved for legal fees and expenses through July 6, 2001. Administrator does not assert that these fees are inaccurate or unreasonable.

From the record before us, it appears Mr. Cate's fees are associated with multiple services provided to the conservator, with the opening of Ms. Davis's estate, with the investigation of the 1996 trust, and with the transfer of assets from the conservatorship to the estate. The trial court found that Mr. Cate's services were reasonable and necessary and, accordingly, appropriately chargeable to the estate. Based on this record, we cannot say the evidence preponderates against the trial court's determination.

Holding

In light of the foregoing, the judgment of the trial court is affirmed. Costs of this appeal are taxed to the Appellant, Ames Davis, Administrator CTA, and his surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE

²In the argument section of his brief to this Court, Administrator further asserts that the claim for attorney's fees rightfully belongs to the conservator and not to Mr. Cate. However, Administrator failed to raise this question as an issue for review. We may consider an issue waived where it is argued in the brief but not designated as an issue. *Childress v. Union Realty Co.*, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002). Accordingly, we decline to address this issue here.